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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/035,522	11/09/2001	Matthias Knitt	2000DE439	3068

7590

10/28/2003

Clariant Corporation
Industrial Property Department
4331 Chesapeake Drive
Charlotte, NC 28216

EXAMINER

MEDLEY, MARGARET B

ART UNIT	PAPER NUMBER
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1714

DATE MAILED: 10/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/035,522	Applicant(s) KRULL ET AL.	
	Examiner Margaret B. Medley	Art Unit 1714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on 11 July 2003.

2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) 1-6 and 9-18 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) 1-6 and 9-11 is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All b) ☐ Some * c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. _____.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____	6) <input type="checkbox"/> Other: _____

DETAILED ACTION

The response for the amendment to page 2 and to claims 1, 9-11, the cancellation of claims 7-8 and the addition of claims 12-18 dated July 11, 2003 has been entered of record.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-6 and 9-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chandler 5,755,834 combined with applicants' admission and Friedrich et al (Friedrich) 4,732,576.

Chandler teaches methods for enhancing the low temperature performance of fuels, column 2, lines 31-39 and column 10, lines 1-9 comprising concentrates wherein the fuel composition comprises nitrogen-containing derivatives of a carboxylic acid as a wax modifier,

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an organic acid, and at least one flow improver. The nitrogen-containing compounds are disclosed as being amine salts or amides formed by the reaction of hydrocarbyl amines including groups of straight or branched chain, column 2 lines 51-55 and 62-65. The amines may be primary, secondary, tertiary or quaternary, column 3, lines 22-24. Further disclosed are amines of 12 to 22 carbon atoms, column 3, lines 25-45 and 60 to column 4, line 11, example 1 and claims 1, 7, 10 and 16 that render the instant claims obvious. It would be obvious to the artisan in the art to select branched and aliphatic amines depending on the desired end result effect to be achieved.

Applicants make admission on record at page 2 paragraph [006] that the prior art patent EP-0,798,364 teaches salts and amides of mono-to tetra -carboxylic acids of 2-50 carbon atoms and aliphatic mono-/polyamines of 2 to 50 carbons that are known lubricity enhancers for low sulfur diesel fuel. Preferred amines have 8 to 20 carbon atoms. The Admitted Prior Art provides the teaching that it would be reasonable obvious to the artisan in the art that amine salts and/or amides of Chandler would impact lubricity properties to low (0.05%) sulfur fuel. It would be reasonable to the artisan in the art that the branched amines of Chandler would also impart lubricity properties to low sulfur fuel, as well as, other improved properties that branched chained amines have over straight chained amines.

Friedrich teaches that tallow oil fatty acid have a resin content, column 6 line 53, and further teach various branched alkyl chain from 4 to 12 carbon atoms for carboxylic acids, column 4 line 56-59 and other acids column 4 lines 21-29, that would include fat's, column 3, lines 50-56, resin and tall oil acids that further render obvious the resin acids of instant claim 16 and the tall oil fatty acid of instant claim 18.

Applicant's arguments filed July 11, 2003 have been fully considered but they are not persuasive.

Applicants' arguments that Chandler's lacks teachings to applicant short branched structure is irrelevant in that the all the claims are not limited to short chain branched structure. Further applicant has not defined what is considered short chain branched structure. Further it is noted that most reactions require some heat to react unless the reaction is spontaneously.

The examiner maintains the position that EP- 0798,364 is properly combined with the primary reference. Friedrich further provides teachings to the artisan in the art to use resin acids or tall oil fat with short chain branched amines in the primary references.

The 112 rejections are withdrawn in view of applicants' amendments to the claims.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Margaret B. Medley whose telephone number is 703-308-2518. The examiner can normally be reached on Monday-Friday from 7:30 am to 6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on 703-306-2777. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

M. Medley/lap
October 21, 2003


MARGARET MEDLEY
PRIMARY EXAMINER